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8 ERNESTO M. CONTRERAS,
9 Petitioner,

10 v.
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12 ROSEMARY NDOH, Warden,
13 Respondent.
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15 Case No. 20-06206 BLF (PR)
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17 **ORDER TO SHOW CAUSE**

18 Petitioner, a California inmate, filed a *pro se* petition for a writ of habeas corpus
19 pursuant to 28 U.S.C. § 2254, challenging his state conviction in Santa Clara County
20 Superior Court.¹ Dkt. No. 1. Petitioner requested a stay to exhaust a new claim involving
21 a polygraph test in state court, which the Court denied without prejudice to filing a
22 renewed motion for a stay that satisfied the factors under *Rhines v. Weber*, 544 U.S. 269
23 (2005). Dkt. No. 7. Petitioner was advised that if he failed to file a renewed motion in the
24 time provided, the matter would proceed on the cognizable claims. *Id.* at 2. The time for
25 filing a renewed motion has passed with no response from Petitioner. Accordingly, this
26 matter will proceed on the exhausted claims identified below.

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28 ¹¹ This matter was reassigned to this Court on October 6, 2020, after Petitioner did not file
consent to magistrate judge jurisdiction in the time provided. Dkt. Nos. 3, 5.

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DISCUSSION

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I. Standard of Review

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This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

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It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

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II. Analysis

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Petitioner claims the following grounds for habeas relief: (1) the trial court incorrectly imposed consecutive sentencing under state law; (2) the state appellate court denied him due process by failing to remand the matter after the trial court incorrectly imposed consecutive sentences; and (3) there was insufficient evidence to support Count 3, aggravated sexual assault of a child, in violation of his right to a fair trial and due process. Dkt. No. 1 at 5. Liberally construed, these claims are cognizable under § 2254 and merit an answer from Respondent.

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CONCLUSION

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For the foregoing reasons and for good cause shown,

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1. The Clerk shall serve electronically a copy of this order upon the Respondent and the Respondent’s attorney, the Attorney General of the State of California, at the following email address: SFAWTParalegals@doj.ca.gov. The petition and any exhibits thereto are available via the Electronic Case Filing System for the Northern District of California. The Clerk also shall serve a copy of this order on Petitioner.

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2. Respondent shall file with the court and serve on Petitioner, within **ninety (90)** days of the issuance of this order, an answer conforming in all respects to Rule 5 of

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1 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus
2 should not be issued. Respondent shall file with the answer and serve on Petitioner a copy
3 of all portions of the state trial record that have been transcribed previously and that are
4 relevant to a determination of the issues presented by the petition.

5 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with
6 the Court and serving it on Respondent within **thirty (30)** days of his receipt of the
7 answer.

8 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
9 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
10 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
11 and serve on Respondent an opposition or statement of non-opposition within **twenty-**
12 **eight (28)** days of receipt of the motion, and Respondent shall file with the court and serve
13 on Petitioner a reply within **fourteen (14)** days of receipt of any opposition.

14 4. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded
15 that all communications with the Court must be served on Respondent by mailing a true
16 copy of the document to Respondent's counsel. Petitioner must keep the Court and all
17 parties informed of any change of address by filing a separate paper captioned "Notice of
18 Change of Address." He must comply with the Court's orders in a timely fashion. Failure
19 to do so may result in the dismissal of this action for failure to prosecute pursuant to
20 Federal Rule of Civil Procedure 41(b).

21 **IT IS SO ORDERED.**

22 Dated: February 23, 2021



BETH LABSON FREEMAN
United States District Judge

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